

DANIEL G. SWANSON, SBN 116556  
dswanson@gibsondunn.com  
GIBSON, DUNN & CRUTCHER LLP  
333 South Grand Avenue  
Los Angeles, CA 90071  
Telephone: 213.229.7000  
Facsimile: 213.229.7520

CYNTHIA E. RICHMAN (D.C. Bar No.  
492089; *pro hac vice*)  
crichman@gibsondunn.com  
GIBSON, DUNN & CRUTCHER LLP  
1050 Connecticut Avenue, N.W.  
Washington, DC 20036  
Telephone: 202.955.8500  
Facsimile: 202.467.0539

JULIAN W. KLEINBRODT, SBN 302085  
jkleinbrodt@gibsondunn.com  
GIBSON, DUNN & CRUTCHER LLP  
One Embarcadero Center, Suite 2600  
San Francisco, CA 94111  
Telephone: 415.393.8200  
Facsimile: 415.393.8306

MARK A. PERRY, SBN 212532  
mark.perry@weil.com  
JOSHUA M. WESNESKI (D.C. Bar No.  
1500231; *pro hac vice*)  
joshua.wesneski@weil.com  
WEIL, GOTSHAL & MANGES LLP  
2001 M Street NW, Suite 600  
Washington, DC 20036  
Telephone: 202.682.7000  
Facsimile: 202.857.0940

MORGAN D. MACBRIDE, SBN 301248  
morgan.macbride@weil.com  
WEIL, GOTSHAL & MANGES LLP  
Redwood Shores Pkwy, 4th Floor  
Redwood Shores, CA 94065  
Telephone: 650.802.3044  
Facsimile: 650.802.3100

Attorneys for Defendant APPLE INC.

**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
**OAKLAND DIVISION**

EPIC GAMES, INC.

Plaintiff, Counter-defendant  
v.

APPLE INC.,

Defendant, Counterclaimant

Case No. 4:20-cv-05640-YGR-TSH

**APPLE INC.'S STATEMENT IN SUPPORT  
OF ADMINISTRATIVE MOTION TO SEAL**

The Honorable Thomas S. Hixson

**TABLE OF CONTENTS**

	<u>Page</u>
LEGAL STANDARD.....	1
DISCUSSION.....	2
CONCLUSION.....	4

## TABLE OF AUTHORITIES

Page(s)Cases

<i>Al Otro Lado, Inc. v. Wolf</i> , 2020 WL 5422784 (S.D. Cal. Sept. 10, 2020).....	2
<i>In re Anthem, Inc. Data Breach Litig.</i> , 2018 WL 3067783 (N.D. Cal. Mar. 16, 2018).....	2
<i>Apple Inc. v. Rivos, Inc.</i> , 2024 WL 1204115 (N.D. Cal. Mar. 21, 2024).....	1, 3
<i>DNA Genotek Inc. v. Spectrum Sols., L.L.C.</i> , 2023 WL 4335734 (S.D. Cal. May 10, 2023).....	2, 3
<i>Ervine v. Warden</i> , 214 F. Supp. 3d 917 (E.D. Cal. 2016).....	2
<i>Kamakana v. City and Cnty. of Honolulu</i> , 447 F.3d 1172 (9th Cir. 2006) .....	1, 2
<i>Krommenhock v. Post Foods, LLC</i> , 2020 WL 2322993 (N.D. Cal. May 11, 2020).....	3
<i>Lamartina v. VMware, Inc.</i> , 2024 WL 3049450 (N.D. Cal. June 17, 2024).....	2
<i>Lee v. Great Am. Life Ins. Co.</i> , 2023 WL 8126850 (C.D. Cal. Nov. 13, 2023).....	2
<i>Phillips v. Gen. Motors Corp.</i> , 307 F.3d 1206 (9th Cir. 2002) .....	1, 3
<i>PQ Labs, Inc. v. Qi</i> , 2014 WL 4617216 (N.D. Cal. Sept. 15, 2014).....	1
<i>Rembrandt Diagnostics, LP v. Innovacon, Inc.</i> , 2018 WL 1001097 (S.D. Cal. Feb. 21, 2018).....	2
<i>Snapkeys, Ltd. v. Google LLC</i> , 2021 WL 1951250 (N.D. Cal. May 14, 2021).....	2, 3
<i>UnifySCC v. Cody</i> , 2023 WL 7170265 (N.D. Cal. Oct. 30, 2023).....	3
<i>Vineyard House, LLC v. Constellation Brands U.S. Ops., Inc.</i> , 619 F. Supp. 3d 970 (N.D. Cal. 2021) .....	2

<i>Williams v. Apple Inc.</i> , 2021 WL 2476916 (N.D. Cal. June 17, 2021) .....	3
------------------------------------------------------------------------------------	---

**Other Authorities**

Federal Rule of Civil Procedure 26(c) .....	1
Local Rule 79-5.....	1

Pursuant to Federal Rule of Civil Procedure 26(c) and Local Rule 79-5, Apple Inc. (“Apple”) submits this statement in support of Epic Games, Inc.’s Administrative Motion to Consider Whether Another Party’s Material Should Be Sealed Pursuant to Civil Local Rule 79-5 (Dkt. 1148) (“Epic’s Motion”). Apple respectfully requests that the Court seal Exhibits A–B to Epic’s Motion in their entirety and that the Court seal portions of the privilege log entries submitted as Exhibit C to Epic’s Motion. These exhibits contain information sealable under controlling law and Local Rule 79-5. Specifically, Exhibits A–B are confidential documents discussing Apple’s business strategy in connection with regulatory changes and requirements in the Netherlands and the European Union more broadly. Exhibit C contains excerpts from Apple’s privilege log prepared for the Special Masters conducting evaluation of the privilege claims stemming from Apple’s re-review. The privilege log is required to be filed under the terms of the Privilege Re-Review Protocol (Dkt. 1092), but contains competitively sensitive, non-public information regarding Apple’s project codenames. Apple’s proposed redactions of Exhibit C are indicated in the redacted version of Exhibit C filed with this statement and itemized in the concurrently filed Declaration of Mark A. Perry (the “Perry Declaration”).

### LEGAL STANDARD

“The court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense,” including preventing the disclosure of information. *See* Fed. R. Civ. P. 26(c). The Court has “broad latitude” “to prevent disclosure of materials for many types of information, including, *but not limited to*, trade secrets or other confidential research, development, or confidential information.” *Phillips v. Gen. Motors Corp.*, 307 F.3d 1206, 1211 (9th Cir. 2002) (emphasis in original); *see also Kamakana v. City and Cnty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006) (compelling circumstances exist to seal potential release of trade secrets) (citing *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 598 (1978)); *PQ Labs, Inc. v. Qi*, 2014 WL 4617216, at \*1 (N.D. Cal. Sept. 15, 2014) (granting multiple motions to seal where publication would lead to the disclosure of trade secrets); *Apple Inc. v. Rivos, Inc.*, 2024 WL 1204115, at \*1 (N.D. Cal. Mar. 21, 2024) (granting request to seal “internal product codenames” and noting that a prior request for the same had also been granted).

Although a party must show compelling circumstances to seal information appended to

dispositive motions, the standard for non-dispositive motions is simply “good cause.” *In re Anthem, Inc. Data Breach Litig.*, 2018 WL 3067783, at \*2 (N.D. Cal. Mar. 16, 2018); *Rembrandt Diagnostics, LP v. Innovacon, Inc.*, 2018 WL 1001097, at \*1 (S.D. Cal. Feb. 21, 2018); *see DNA Genotek Inc. v. Spectrum Sols., L.L.C.*, 2023 WL 4335734, at \*2 (S.D. Cal. May 10, 2023). In general, requests to seal information should be narrowly tailored “to remove from public view only the material that is protected.” *Ervine v. Warden*, 214 F. Supp. 3d 917, 919 (E.D. Cal. 2016); *Vineyard House, LLC v. Constellation Brands U.S. Ops., Inc.*, 619 F. Supp. 3d 970, 972 n.2 (N.D. Cal. 2021) (Gonzalez Rogers, J.) (granting a motion to seal “because the request is narrowly tailored and only includes confidential information”).

### DISCUSSION

Apple seeks to seal the confidential business information contained in Exhibits A–B, and also seeks to seal the confidential, sensitive business information regarding project codenames in Exhibit C. *See Perry Decl.* ¶¶ 5–6.

Apple’s administrative motion to seal is subject to the “good cause” standard because it concerns non-dispositive objections related to discovery. *See, e.g., Kamakana*, 447 F.3d at 1179 (“[T]he public has less of a need for access to court records attached only to non-dispositive motions because those documents are often unrelated, or only tangentially related, to the underlying cause of action.”); *Lee v. Great Am. Life Ins. Co.*, 2023 WL 8126850, at \*2 (C.D. Cal. Nov. 13, 2023) (“Matters concerning discovery generally are considered nondispositive of the litigation” (quotation omitted)); *see also In re Anthem, Inc. Data Breach Litig.*, 2018 WL 3067783, at \*2; *Rembrandt Diagnostics, LP*, 2018 WL1001097, at \*1; *Al Otro Lado, Inc. v. Wolf*, 2020 WL 5422784, at \*4 (S.D. Cal. Sept. 10, 2020).

Apple’s sealing request meets the good cause standard here. *Lamartina v. VMware, Inc.*, 2024 WL 3049450, at \*2 (N.D. Cal. June 17, 2024) (good cause to seal internal email communications). Apple operates in an intensely competitive environment, and thus has taken extensive measures to protect the confidentiality of its information. *See Perry Decl.* ¶ 3. Disclosure of the sealed information in Exhibits A and B—which contain information about Apple’s business strategy to respond to new regulatory requirements in the Netherlands and the European Union—would reveal non-public information about Apple’s confidential business strategy in response to these emerging regulatory issues. *See id.* ¶ 5; *see also DNA Genotek Inc.*, 2023 WL 4335734, at \*2 (finding good cause where disclosure would

1 “undercut” a party’s “position ... in the marketplace”); *Apple Inc.*, 2024 WL 1204115, at \*1. Disclosure  
2 of the sealed information in Exhibit C relating to confidential project codenames could harm Apple’s  
3 business interests. Perry Decl. ¶ 6.

4 Apple has narrowly tailored its sealing request to include only the information necessary to  
5 protect its confidential business information. *See Krommenhock v. Post Foods, LLC*, 2020 WL 2322993,  
6 at \*3 (N.D. Cal. May 11, 2020) (granting motion to seal “limited” information); *see also Phillips*, 307  
7 F.3d at 1211; *Williams v. Apple Inc.*, 2021 WL 2476916, at \*2–3 (N.D. Cal. June 17, 2021) (noting  
8 Apple’s narrowed sealing requests with “tailored redactions”); Dkt. No. 643 at 3 (finding Apple’s  
9 proposed redactions appropriate for an exhibit when redactions were “narrowly tailored” to “sensitive  
10 and confidential information”). Apple has only partially redacted limited information in Exhibit C. *See*  
11 Perry Decl. ¶ 6. Redaction of Exhibits A–B is not practicable because the confidential information  
12 permeates the entirety of those documents.

13 For the foregoing reasons, there is good cause that warrants partially sealing the exhibits to Epic’s  
14 Motion.

### 15 CONCLUSION

16 Apple respectfully requests that the Court seal the information identified in the accompanying  
17 declaration.

18  
19  
20 Dated: February 6, 2025

Respectfully submitted,

21 By: Mark A. Perry

22 Mark A. Perry

23 WEIL, GOTSHAL & MANGES LLP

24 Attorney for Apple Inc.  
25  
26  
27  
28